GOVINDARAJU KUPPUSAMY v. TAN SRI DATO' SERI DR MAHADEVAN A MAHALINGAM & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
AMARJEET SINGH SERJIT SINGH J
[ORIGINATING SUMMONS NO: WA-17D-16-05-2022]
19 APRIL 2024

Abstract – *Misconduct, inter alia, is conduct by an advocate and solicitor in a professional capacity or otherwise which amounts to grave impropriety and which conduct includes any one or more of the 15 instances listed in s. 94(3) of the Legal Profession Act 1976. The complainant in this case had submitted a written complaint supported by documents of the solicitor's misconduct, ie, that the solicitor had acted improperly, in an unprofessional manner and in conflict of his client's interest, which was misconduct that fell within the scope of s. 94(3). There was therefore no error of law by the Advocates and Solicitors Disciplinary Board in accepting the complaint by the complainant who had satisfied the criteria of a 'complainant' under the Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994. Furthermore, when a solicitor has been sufficiently informed and supplied with the facts and particulars of misconduct complained of to enable him to explain away or exculpate himself, he has been given the right to be heard which is in conformity with natural justice.*

LEGAL PROFESSION: *Advocates and solicitors – Misconduct – Finding of – Appeal against affirmation of finding of misconduct by Advocates and Solicitors Disciplinary Board ('Board') – Whether complainant qualified as 'complainant' for purposes of disciplinary action against advocate and solicitor – Whether complainant satisfied criteria under Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994 – Whether misconduct fell within scope of s. 94(3) of Legal Profession Act 1976 – Whether solicitor sufficiently informed and supplied with facts and particulars of misconduct complained of – Whether solicitor given right to be heard – Whether punishment of fine lighter punishment and not adverse to solicitor*

STATUTORY INTERPRETATION: *'complainant' – Definition of – Legal Profession Act 1976 ('LPA') – Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994 ('Rules') – Word 'complaint' defined as 'a written complaint concerning the misconduct of an advocate and solicitor or a pupil' – Whether misconduct complained of fell within scope of s. 94(3) of LPA – Whether complainant fell within definition of 'complainant'*

This was an appeal by the appellant, an advocate and solicitor, against the order of the Advocates and Solicitors Disciplinary Board ('Board'), which had affirmed the recommendation of the Disciplinary Committee ('Committee') on the finding of misconduct but had rejected the recommendation of punishment, namely, striking off the appellant from the Roll of Advocates and Solicitors and imposed a lesser punishment, a fine of RM50,000 to be paid to the discipline fund. The first respondent and one Sandrasegaran Mahalingam were the executors of the will of their late brother, Ratnavale. The will was dated 1971. The beneficiaries under the will were Ratnavale's legal wife, his mother and six children. Probate was extracted on 9 May 1974. Thereafter, began years of litigation through several court cases. One Dr Jeyalakshmi ('Jeyalakshmi') and one Panchanath, the children of Ratnavale, and the beneficiaries under the will had engaged the appellant to file a suit against seeking accounts and distribution of the properties of the estate against the executors. One of the properties in dispute was Lot 743. The appellant was involved in the transfer of Lot 743 to his wife, Muniamah, pursuant to a letter dated 29 September 1972 ('1972 letter') through Jeyalakshmi as administrator of the estate. The 1972 letter was purportedly made between Ratnavale and Subramaniam Kuppusamy, the appellant's father-in-law, wherein Ratnavale allegedly agreed to sell Subramaniam Lot 743 for the sum of RM40,000. To facilitate the transfer, the appellant, on 9 May 2014, settled an affidavit for Jeyalakshmi in the following words '… I ought to seek an order from this Honourable Court authorising me to sell and transfer the said Lot 743 to Muniamah …'. Lot 743 was then successfully transferred to the appellant's wife, Muniamah, on 9 July 2014, notwithstanding that the appellant knew that it was part of Ratnavale's estate. The will was subsequently, in one of the cases, set aside as null and void but restored by the Court of Appeal, which ordered that the properties of the estate be distributed according to the will of the beneficiaries, which included Lot 743. The memorandum of transfer in Form 14A was introduced in court wherein Lot 743 was purportedly sold to Muniamah for RM2,244,000. The said Form 14A was attested by an independent solicitor, Stella Soo. However, when a search was conducted at the land office, a different Form 14A was actually lodged in the land office which led to the transfer of Lot 743 to Muniamah. Evidence revealed that the appellant attested as the solicitor for both his clients, Jeyalakshmi as seller, and his wife, Muniamah, as purchaser in the sale and purchase transaction. The first respondent filed a complaint with the Board. The Board found merit in the first respondent's complaint and proceeded to appoint the Committee, as required by s. 103A of the Legal Profession Act 1976. The Committee found that a cause of disciplinary action existed and that the liability was of such gravity that warranted the punishment of striking the appellant off the Roll of Advocates and Solicitors under s. 103C(1)(c) of the LPA. The Board affirmed the findings of the Committee

on misconduct but rejected the punishment of striking off as it thought the lesser punishment of a fine of RM50,000 would be more appropriate. The appellant raised several grounds of appeal: (i) the first respondent had no *locus standi* to lodge the disciplinary complaint against the appellant to the Board; (ii) the misconduct the appellant was charged with was vague and not specific; and (iii) the appellant was not given a right to be heard before the Board reduced the punishment from being struck off the Roll of Advocates and Solicitors to a fine as required by s. 103D(4) of the LPA.

Held (dismissing appeal):

(1) The LPA provides for rules to be made in respect of disciplinary proceedings under the LPA. At the time the first respondent filed his complaint, the Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994 ('Rules 1994') were still in force. A 'complainant' under these rules was defined as follows: … 'the person who has made a complaint, whether personally or through his solicitor, and includes the Bar Council and a State Bar Committee.' (para 22)

(2) The definition requires a 'complaint' to be made. It is so wide that it can be made by any person against an advocate and solicitor and includes the Bar Council or a State Bar Committee. The word 'complaint' is defined and means 'a written complaint concerning the misconduct of an advocate and solicitor or a pupil.' Misconduct, *inter alia*, is conduct by an advocate and solicitor in a professional capacity or otherwise which amounts to grave impropriety and which conduct includes any one or more of the instances listed in s. 94(3) of the LPA. The misconduct alleged in the written complaint by the first respondent against the appellant was: (i) the appellant had acted improperly and in an unprofessional manner when he knew that the probate had been extracted, as he had been acting for the beneficiaries of the will against the first respondent, and yet obtained letters of administration making Jeyalakshmi the administrator of the estate and proceeded to transfer properties on that basis, a conduct amounting to grave impropriety; and (ii) the appellant proceeded to act in conflict of his client's interest by filing a suit on behalf of Fam Kim Moy to set aside the will and probate. The first respondent therefore fell within the definition of 'complainant' under the said rules. There was a written complaint supported by documents of the misconduct of the appellant, a misconduct which fell within the scope of s. 94(3) of the LPA. There was no error of law by the Board in accepting the complaint by the first respondent who satisfied the criteria of a 'complainant' under the Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994. The ground of appeal here was devoid of merit. (paras 23-26)

(3) By the time the matter went for inquiry before the Committee appointed by the Board, the first respondent had filed a statutory declaration which set out clearly the misconduct of the appellant and the issues to be determined by the Committee. The facts making out the misconduct alleged against the appellant were set out in detail and the appellant was made very well aware of the case he had to meet. The first respondent stated that the misconduct alleged were under s. 94(3)(c), (d), (k), (m), (n) and (o) of the LPA. As such, there was no breach of natural justice or a right to be heard. The misconduct was not vague. It was specific and clear. The appellant was sufficiently informed and supplied with the facts and particulars of misconduct complained of to enable him to explain away or exculpate himself. The appellant was given the right to be heard which was in conformity with natural justice. (paras 27-30)

(4) The order of the Board to reduce the punishment was not an order 'adverse' to the appellant under s. 103D(4) of the LPA. Reasonable opportunity to be heard on punishment only arose if the punishment that the Board had in mind was more severe than that recommended. The punishment of fine was a lighter punishment and therefore not adverse to the appellant, given that, being struck off the Roll of Advocates and Solicitors, was the severest punishment. However, after the court had delivered its decision, the court was made aware of the Federal Court case of *Majlis Peguam Malaysia v. Syed Ahmad Imdadz Said Abas & Anor*. In view of the said Federal Court decision, the appellant ought to have been heard before the punishment of fine was meted out. (paras 34, 37 & 39)

Case(s) referred to:

Dinesh Kanavaji Kanawagi & Anor v. Ragumaren N Gopal; Majlis Peguam (Intervener) [2018] 2 CLJ 1 FC ***(refd)***

Majlis Peguam v. Dato' Seri Dr Muhammad Shafee Abdullah [2016] 8 CLJ 749 FC ***(refd)***

Majlis Peguam Malaysia v. Syed Ahmad Imdadz Said Abas & Anor [2024] 1 CLJ 353 FC ***(refd)***

Panchanath Ratnavale v. Sandra Segara Mahalingam & Ors [2012] CLJU 167; [2012] 1 LNS 167 HC ***(refd)***

Syed Ahmad Imdadz Said Abas v. Imej Muhibah Sdn Bhd; Majlis Peguam Malaysia (Intervener) [2021] 7 CLJ 125 HC ***(refd)***

Wan Ahmad Wan Daud lwn. Wan Jawahir Hj Harun & Satu Lagi Rayuan [2016] 4 CLJ 572 CA ***(refd)***

Legislation referred to:

Legal Profession Act 1976, ss. 94(3)(c), (d), (k), (m), (n), (o), 100(1)(b)(ii), 103A, 103B, 103C(1)(c), 103D(4)

For the appellant - V Amareson; M/s Amareson & Meera
For the respondent - Stephanie Khaw Chia Ling; M/s Khaw Ewe Seng & Co
For the intervener - Teng Wei Hun; M/s Skrine

Reported by Suhainah Wahiduddin

JUDGMENT

Amarjeet Singh Serjit Singh J:

Introduction

[1] This is an appeal by the appellant, an advocate and solicitor, against the order of the Advocates and Solicitors Disciplinary Board ("the Board") dated 8 April 2022, which had affirmed the recommendation of the Disciplinary Committee ("the Committee") on the finding of misconduct but had rejected the recommendation of punishment, namely, striking off the appellant from the Roll of Advocates and Solicitors and imposed a lesser punishment, a fine of RM50,000 to be paid to the discipline fund within one month from the date of the said order.

[2] The appellant in its oral submissions before me raised three grounds of appeal:

(i) the first respondent, Tan Sri Dato' Seri Dr Mahadevan a/l A Mahalingam, had no *locus standi* to lodge a disciplinary complaint against the appellant to the Board;

(ii) there was a failure to comply with s. 94(3) of the LPA, in that, no specific misconduct was framed against the appellant; and

(iii) the appellant was not heard when the Board decided to reject the recommendation of the Committee striking the appellant off the Roll of Advocates and Solicitors and render the punishment of a fine of RM50,000 under s. 103D of the LPA.

[3] On 15 December 2023, I dismissed the appeal. This judgment contains the reasons for my decision.

The Background Facts

[4] The complaint of misconduct made by the first respondent is predicated on the following facts. The first respondent and one Sandrasegaran s/o Mahalingam were the executors of the will of their late brother, Ratnavale. The will is dated 10 February 1971. The beneficiaries under the will are Ratnavale's legal wife, his mother, and six children. Probate was extracted on 9 May 1974. Thereafter, began years of litigation through several court cases.

[5] Dr Jeyalakshmi d/o Ratnavale ("Jeyalakshmi") and Panchanath s/o Ratnavale, the children of Ratnavale and the beneficiaries under the will had engaged the appellant to file a suit against seeking accounts and distribution of the properties of the estate against the executors. One of the properties in dispute was Lot 743, Section 3, Georgetown, North East District, Penang ("Lot 743").

[6] It turns out that the appellant was involved in the transfer of Lot 743 to his wife, Muniamah a/p Subramaniam ("Muniamah"), pursuant to a letter dated 27 September 1972 ("the 1972 letter") through Jeyalakshmi as administrator of the estate. The 1972 letter was purportedly made between Ratnavale and Subramaniam s/o Kuppusamy, the appellant's father-in-law ("Subramaniam"), wherein Ratnavale allegedly agreed to sell Subramaniam Lot 743 for the sum of RM40,000. The existence of the 1972 letter was not known of, produced in court, or mentioned by the appellant in the said civil suits until it was used to transfer Lot 743 to Muniamah.

[7] To facilitate the transfer, the appellant, on 9 May 2014, settled an affidavit for Jeyalakshmi in the following words:

> In the event we refuse to honour the aforesaid agreement entered into by my late father, it is almost certain that legal proceedings will be commenced against us, which my siblings and I very much wish to avoid. ... In the alternative, my solicitors advise me which I verily believe to be true that I ought to seek an order from this honourable court authorizing me to sell and transfer the said Lot 743, Section 3, Georgetown, North East District, Penang to Muniamah a/p Subramaniam based on the consideration stated in the letter dated 27.9.1972 made between my father and the said Subramaniam s/o Kuppusamy, which I humbly seek.

[8] Lot 743 was then successfully transferred to the appellant's wife, Muniamah on 9 July 2014, notwithstanding, that the appellant knew that it was part of the Ratnavale's estate.

[9] The will was subsequently in one of the cases set aside as null and void but restored by the Court of Appeal on 30 September 2016. The Court of Appeal ordered that the properties of the estate be distributed according to the will of the beneficiaries. The properties included Lot 743, which then had already been transferred to and was in the name of the appellant's wife, Muniamah. In view of the order of the Court of Appeal, on 28 February 2017, Muniamah, issued a letter, settled by the appellant, to Jeyalakshmi which, *inter alia*, stated as follows:

> I refer to the above case and understand you are applying to the court for an order to sell Lot 743 ... which you transferred to me in 2014 pursuant to Order of the Penang High Court dated 11.6.2016. As per your request in light of the Court of Appeal's decision on 30.9.2016 that Lot 743 ... has been declared to be distributed among all 8 beneficiaries named in your father's will, I hereby agree that I will sell Lot 743 at your request so as to save you the costs and disbursements of a re-transfer.

[10] On 26 April 2017, the appellant prepared and filed an affidavit on behalf of his client, Jeyalakshmi, assuring her that the transfer was legally carried out in the following words:

> The said transfer was done regularly and legally *vide* order of the Penang High Court dated 11.6.2014 and in addition to the said order of court, I appeared personally before an independent solicitor, Ms Stella Soo to execute the Transfer Form 14A.

[11] The memorandum of transfer in Form 14A was introduced in court wherein Lot 743 was purportedly sold to Muniamah for RM2,244,000. The said Form 14A was attested by Ms Stella Soo. However, when a search was conducted at the land office, it was discovered that a different Form 14A was actually lodged in the land office, which led to the transfer of Lot 743 to Muniamah. It was not the Form 14A attested to by Ms Stella Soo. The evidence revealed that the appellant attested as the solicitor for both his client, Jeyalakshmi, as seller, and his wife, Muniamah, as purchaser in the sale and purchase transaction.

[12] On 17 May 2019, a further search on Lot 743 revealed that the property had a lien holder's caveat lodged by the appellant as a solicitor for one, Amar Pritpal bin Abdullah ("the caveator"). The caveator's reason was stated in the statutory declaration in support of lodging the caveat as follows:

> Since 1998 to this date spanning 18 years, at the request of Govindaraju a/l Kuppusamy, I have advanced monies from my personal funds for the purpose of funding the aforesaid litigation to be repaid upon collection of the fees from his clients after the completion of the litigation ... All in Govindaraju and I are in agreement that my advances to date are approximately Ringgit Malaysia Four Million (RM4,000,000.00) only as security for the repayment of the aforesaid advances, without interest, the lawful wife of Govindaraju, one Muniamah a/p Subramaniam as the registered owner of Lot 743 ... has deposited with me the aforesaid Geran No ... as a lien ... for the advances made before and for further advances to be made pending the repayment aforesaid of RM4,000,000.00.

The Complaint To The Board

[13] The first respondent filed a complaint with the Board on 13 February 2017. The Board, under s. 100(1)(b)(ii) of the LPA, found merit in the complaint and sent the complaint to the appellant and sought an explanation. The appellant submitted a written explanation supported by documents dated 8 June 2017. The first respondent responded to the explanation by providing a reply dated 9 August 2017, together with supporting documents to rebut the appellant's explanation. Thereafter, the appellant submitted a written submission dated 27 December 2017, and the first respondent submitted his written submissions on 30 April 2018. The Board found merit in the first respondent's complaint. On 18 May 2018, the Board after hearing the appellant's counsel, proceeded to appoint the Committee as required by s. 103A of the LPA. At all material times, both before the Board and the Committee, the appellant was represented by counsel.

The Report Of The Committee And The Order Of The Board

[14] The appellant raised several preliminary objections at the inquiry that was convened under s. 103B of the LPA to hear the complaint. One of the preliminary objections was that the first respondent was not competent or

authorised to make the complaint against the appellant *ie*, that the first respondent had no *locus standi* to make the complaint against the appellant. The Committee had dismissed the preliminary objection.

[15] At the conclusion of the inquiry, after considering the complaint, hearing witnesses, perusing documentary evidences, and considering the submissions made, the Committee proceeded to record its findings wherein it had found that cause for disciplinary action existed and that the liability was of such gravity to warrant the punishment of striking the appellant off the Roll of Advocates and Solicitors under s. 103C(1)(c) of the LPA.

[16] The Committee found that the actions of the appellant amounted to misconduct involving conflict of interest, unbefitting conduct of acting dishonestly, acting in gross disregard of his client's interests, and failing to adhere to the Legal Profession Rules. As shown above, the Board affirmed the findings of the Committee on misconduct but rejected the punishment of striking out as it thought the lesser punishment of a fine of RM50,000 would be more appropriate.

Grounds Of Appeal

[17] The appellant raised several grounds of appeal but before me proceeded on the following three grounds only:

(i) the first respondent had no *locus standi* to lodge the disciplinary complaint against the appellant to the Board (the "*locus standi*" ground);

(ii) the misconduct the appellant was charged with was vague and not specific (the "vague misconduct" ground); and

(iii) that the appellant was not given a right to be heard before the Board reduced the punishment from struck off the Roll of Advocates and Solicitors to a fine as required by s. 103D(4) of the LPA (the "right to be heard on punishment" ground).

Decision Of The Court

[18] It is opportune, before considering each ground of appeal, to set out the principles for appellate intervention in appeals against the decision of the Board that guides me. In *Majlis Peguam v. Dato' Seri Dr Muhammad Shafee Abdullah* [2016] 8 CLJ 749, the principles of appellate intervention were succinctly summarised as follows:

> Unless the disciplinary committee in the exercise of its powers can be shown to have erred in principle or to have overlooked, misconceived, or disregarded some material matter of fact, or to have failed to act judicially, the court ought not interfere, except in the rarest of cases. This principle has been applied consistently by our courts. (See cases of *Re A Solicitor (No 2)* [1923] 93 LJ KB 761, *Re A Solicitor* [1969] 3 All ER 610, *Keith Sellar v. Lee Kwang And Tennakoon v. Lee Kwang* [1980] 1 MLRA 461; *Gana Muthusamy v. Tetuan LM Ong & Co* [1998] 2 MLRA 208; *Merchant v. Law Society of Saskatchewan* [2002] 8 WWB 214).

[19] In *Dinesh Kanavaji Kanawagi & Anor v. Ragumaren N Gopal; Majlis Peguam (Intervener)* [2018] 2 CLJ 1; [2018] 2 MLJ 265, the Federal Court reiterated the limited circumstances under which appellate intervention may be justified on the finding of facts and the recommendations made by the Committee:

> [23] ... The courts should only interfere with the finding of facts and recommendations of the DC in the following limited circumstances *ie*:
>
> (i) When the findings are manifestly perverse;
>
> (ii) The DC/DB had failed as right-thinking members of the Bar to give due consideration to the facts of the case and the conduct of the solicitor complained against; and
>
> (iii) There had been a breach of natural justice.

[20] Keeping the above principles in mind, I will now address each ground of appeal separately.

The "Locus Standi" Ground

[21] The appellant argued that the first respondent has no interest in the matter and is not an aggrieved party and as such is not competent to make any complaint against the appellant. As such, both the Committee's report, which contains its findings and recommendation and the Board's actions considering the said report culminating in the Board's order are all null and void. I was unable to agree with this submission and dismissed the same.

[22] The question for determination called for by the submission of the appellant is whether the first respondent qualifies as a "complainant" for the purposes of disciplinary action against an advocate and solicitor under the LPA. The answer to this question lies in the meaning given to the word "complainant" under the LPA. The LPA provides for rules to be made in respect of disciplinary proceedings under the LPA. At the time the first respondent filed his complaint the Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994 were still in force. A "complainant" under these Rules was defined as follows:

> ... **the person who** has made a **complaint,** whether personally or through his solicitor, and includes the Bar Council and a State Bar Committee. (emphasis added)

[23] The definition requires a "complaint" to be made. It is so wide that it can be made by any person against an advocate and solicitor and includes the Bar Council or a State Bar Committee. However, the limitation is that the "complaint" must fulfil the requirements of the said Rules. The word "complaint" is defined and means "a written complaint concerning the misconduct of an advocate and solicitor or a pupil". The word "misconduct"

in relation to an advocate and solicitor is further defined and is given the meaning as assigned to it under s. 94(3) of the LPA. The meaning of "misconduct" under s. 94(3) of the LPA is as follows:

> "misconduct" *means conduct* or omission to act in Malaysia or elsewhere by an advocate and solicitor *in a professional capacity or otherwise which amounts to grave impropriety and includes* -
>
> (a) conviction of a criminal offence which makes him unfit to be a member of his profession;
>
> (b) breach of duty to a court including any failure by him to comply with an undertaking given to a court;
>
> (c) dishonest or fraudulent conduct in the discharge of his duties;
>
> (d) breach of any rule of practice and etiquette of the profession made by the Bar Council under this Act or otherwise;
>
> (e) being adjudicated a bankrupt and being found guilty of any of the acts or omissions mentioned in paragraph 33(6)(a), (b), (c), (e), (f), (h), (k) or (l) of the Bankruptcy Act 1967;
>
> (f) the tendering or giving of any gratification to any person for having procured the employment in any legal business of himself or any other advocate and solicitor;
>
> (g) directly or indirectly procuring or attempting to procure the employment of himself or any other advocate and solicitor through or by the instruction of any person to whom any remuneration for obtaining such employment has been given by him or agreed or promised to be so given;
>
> (h) accepting employment in any legal business through a tout;
>
> (i) allowing any unauthorized person to carry on legal business in his name without his direct and immediate control as principal or without proper supervision;
>
> (j) the carrying on by himself, directly or indirectly, of any profession, trade, business or calling which is incompatible with the legal profession or being employed for reward or otherwise in any such profession, trade, business or calling;
>
> (k) the breach of any provision of this Act or of any rules made thereunder or any direction or ruling of the Bar Council;
>
> (l) the disbarment, striking off, suspension or censure in his capacity as a legal practitioner in any other country or being guilty of conduct which would render him to be punished in any other country;
>
> (m) the charging, in the absence of a written agreement, in respect of professional services rendered to a client, of fees or costs which are grossly excessive in all the circumstances;
>
> (n) gross disregard of his client's interests; and

(o) being guilty of any conduct which is unbefitting of an advocate and solicitor or which brings or is calculated to bring the legal profession into disrepute.

(emphasis added)

[24] Thus, misconduct, *inter alia*, is conduct by an advocate and solicitor in a professional capacity or otherwise which amounts to grave impropriety and which conduct includes any one or more of the 15 instances listed in s. 94(3) of the LPA. The first respondent had lodged a written complaint with the Board on 13 February 2017, attaching supporting documents alleging the following acts committed by the appellant:

(i) the appellant as counsel for Jeyalakshmi obtained an order dated 18 March 2011, appointing Jeyalakshmi as legal representative of the estate even though probate had been granted and extracted on 9 May 1974;

(ii) on 5 March 2014, the appellant obtained letters from the administration making Jeyalakshmi the administrator of the estate and thereafter in an *ex parte* originating summons, applied for the transfer of several properties which included Lot 743 which was transferred to the appellant's wife, Muniamah, on 11 June 2014;

(iii) the transfer was made purportedly on a letter for sale of Lot 743 dated 27 September 1972 which was unknown till before; and

(iv) on 18 October 2016, the appellant, acting for the alleged second wife of Ratnavale, Fam Kim Moy, to set aside Ratnavale's will and the probate granted to the first respondent and Sandrasegaran, the executors of the will.

[25] The misconduct alleged in the written complaint against the appellant was stated as follows:

(i) the appellant had acted improperly and in an unprofessional manner when he knew that probate had been extracted, as he had been acting for the beneficiaries of the will against the first respondent and Sandrasegaran for accounts and distribution of the estate properties, and yet obtained letters of administration making Jeyalakshmi the administrator of the estate and proceeded to transfer properties on that basis (the misconduct of "conduct amounting to grave impropriety").

(ii) the appellant who had been acting for the beneficiaries of the will on the basis that the Ratnavale will be valid and authentic (see *Panchanath Ratnavale v. Sandra Segara Mahalingam & Ors* [2012] CLJU 167; [2012] 1 LNS 167; [2012] 5 MLJ 109) proceeded to act in conflict of his client's interest by filing a suit on behalf of Fam Kim Moy to set aside the will and probate (the misconduct of "gross disregard of his client's interest").

[26] I am satisfied that the first respondent falls within the definition of "complainant" under the said Rules. There was a written complaint supported by documents of the misconduct of the appellant. The misconduct, which was clearly set out in the written complaint, was misconduct which fell within the scope of s. 94(3) of the LPA. There was no error of law by the Board in accepting the complaint by the first respondent, who satisfied the criteria of a "complainant" under the Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994. In the circumstances, the ground of appeal is devoid of merit.

The "Vague Misconduct" Ground

[27] I found this ground of appeal also devoid of merit. By the time the matter went for inquiry before the Committee appointed by the Board, the first respondent had filed a statutory declaration which set out clearly the misconduct of the appellant and the issues to be determined by the Committee. The facts making out the misconduct alleged against the appellant were set out in detail. The appellant was made very well aware of the case he had to meet.

[28] Apart from the above, the notes of proceedings show that at the inquiry held on 17 August 2020, the Chairman of the Committee, in the presence of the appellant, had asked counsel for the first respondent to specify the heading of misconduct against the appellant. Counsel for the first respondent stated that the misconduct alleged were under s. 94(3)(c), (d), (k), (m), (n) and (o) of the LPA. As such, there was no breach of natural justice or a right to be heard. The misconduct was not vague. It was specific and clear.

[29] The Committee, after hearing the appellant, the documents presented by the appellant, the documents presented by the first respondent, and the submissions of the parties arrived at the following findings of misconduct proven beyond reasonable doubt based on the complaint by the first respondent:

(i) that the appellant had knowingly entered into a conflict of interest situation when he represented Jeyalakshmi and her siblings and at the same time, facilitated the transfer of Lot 743 to his wife, Muniamah.

(ii) the appellant brought Jeyalakshmi to sign the unregistered Form 14A at Stella Soo's office and had admitted orally before the Committee that if the High Court had sight of the unregistered Form 14A, the court would have concluded that Lot 743 was part of a conflict of interest transaction.

(iii) the appellant had prepared an affidavit in reply that referred to and exhibited the unregistered Form 14A to prove that Lot 743 had been properly transferred to his wife, Muniamah, despite the fact that the

transfer was registered at the land office using a different Form 14A. The affidavit in reply was prepared such as to prevent the High Court from seeing a conflict of interest existed.

(iv) the appellant had settled an affidavit for affirmation by Jeyalakshmi, knowing the facts were not true and caused Jeyalakshmi to affirm a false affidavit for the High Court's consideration in determining the matter before it. In doing so, the appellant had acted in gross disregard to Jeyalakshmi's interests.

(v) a contingency fee arrangement existed between Jeyalakshmi and the appellant establishes the fact that the appellant had acquired a pecuniary interest in the matter.

(vi) the appellant had admitted to the preparation of two sets of Form 14A for the transfer of Lot 743 in order to evade paying stamp duty on the actual market value of the property. The appellant had committed an act of dishonesty to the Inland Revenue Board.

(vii) the appellant had defied an injunction against him, which injuncted him from dealing with Lot 743 by the act of lodging the lien holder's caveat in favour of Pritpal. The appellant admitted that Pritpal had never advanced the sum of RM4,000,000 to advance the litigation to lodge a lien holder's caveat on the land. The appellant was found to have committed an act of dishonesty against the land office and engaged in conduct unbefitting of an advocate and solicitor.

[30] From the records, I am satisfied that the appellant was sufficiently informed and supplied with the facts and particulars of misconduct complained of to enable him to explain away or exculpate himself. The appellant was given the right to be heard which is in conformity with natural justice.

The "Right To Be Heard On Punishment" Ground

[31] The appellant submitted that the Board had not given the appellant a reasonable opportunity of being heard under s. 103D(4) of the LPA, which read as follows:

> Before the Disciplinary Board makes an order **that is likely to be adverse against an advocate and solicitor** under subsection (2) or (3), it shall notify the advocate and solicitor of its intention to do so and give him a reasonable opportunity to be heard. (emphasis added)

[32] The recommendation of the Committee on liability and punishment is reproduced first:

> It is the unanimous finding of this DC that cause for disciplinary action exists against the Respondent, Govindaraju s/o Kuppusamy. Because this misconduct involves a conflict of interest, unbefitting conduct by the Respondent, acting dishonestly, acting in gross disregard of his client's

interest, and failing to adhere to the Legal Profession Rules, a mere fine or suspension would not reflect the seriousness of the various offenses. A more proportionate punishment would be striking off.

[33] The Board pronounced its order against the appellant as follows:

> In exercise of the powers conferred by Section 103D of the Legal Profession Act 1976 (the Act), the Disciplinary Board having on 08 April 2022 considered the report made by the Disciplinary Committee on the complaint against the Respondent, affirmed the Disciplinary Committee's finding of liability but rejected the recommendation on punishment for striking off, instead IT IS HEREBY ORDERED that the Respondent do pay a fine of Ringgit Malaysia Fifty Thousand (RM50,000.00) only payable to the Discipline Fund within one (1) month from the date of this Order AND IN DEFAULT THEREOF Section 103(1) of the Act shall apply.

[34] The Board was clear that it had meted out a lesser punishment than that recommended. It was submitted that the order of the Board to reduce the punishment was not an order "adverse" of the appellant under s. 103D(4) of the LPA and that reasonable opportunity to be heard on punishment only arises if the punishment that the Board has in mind is more severe than that recommended. The first respondent relied on the decision of the Court of Appeal in *Wan Ahmad Wan Daud lwn. Wan Jawahir Hj Harun & Satu Lagi Rayuan* [2016] 4 CLJ 572; [2016] 2 MLJ 51 on this interpretation of s. 103D(4) of the LPA.

[35] During oral arguments, the appellant referred to the High Court case of *Syed Ahmad Imdadz Said Abas v. Imej Muhibah Sdn Bhd; Majlis Peguam Malaysia (Intervener)* [2021] 7 CLJ 125; [2021] 10 MLJ 563, where the court was faced with the uncertainty as to whether the punishment of a fine of RM30,000 which was meted out by the Board rejecting the Committee's recommendation of suspension of two years was likely to be adverse to the advocate and solicitor. On these facts *ie*, since it was not likely to be adverse, the High Court decided that the advocate and solicitor ought to have been given a reasonable opportunity to be heard on punishment.

[36] The Court of Appeal affirmed the High Court. The reason, which is merely speculation, since there was no written judgment, would most likely be that due to the uncertainty of whether the punishment was adverse or lighter than the recommended punishment, a reasonable right to be heard ought to be given. The case did go to the Federal Court but there was at the time of hearing oral submissions and fixing a date for decision in the instant case no Federal Court judgment brought to the attention to assist this court.

[37] Suffice it to say, that I followed the Court of Appeal decision of *Wan Ahmad Wan Daud* at the time of making the decision. I dismissed the ground of appeal on the basis that the punishment of fine was a lighter punishment and therefore not adverse to the appellant, given that, being struck off the Roll of Advocates and Solicitors was the severest punishment.

[38] I must, however, confess to being unaware of the written judgment of the Federal Court in *Majlis Peguam Malaysia v. Syed Ahmad Imdadz Said Abas & Anor* [2024] 1 CLJ 353; [2023] MLRAU 275 although a copy was filed in court, after oral submissions but before the date of decision. The judgment was attached to the appellant's supplementary submissions. I only realised of this submission much later. By that time, I had delivered my decision. The law enunciated by the Federal Court had in fact overruled the Court of Appeal decision, which I relied on. The law was stated as follows:

> [26] Section 103D(4) of the LPA is the final tier for the affected advocate and solicitor to defend himself or herself before the final order is imposed upon him by the DB. If the DB sought to impose a punishment or penalty different from the recommendation of the DC, whether adverse to Syed or not, then it should have notified him of its intention to do so and given him a reasonable opportunity to be heard irrespective of whether it is of a greater or lesser penalty or punishment or that is likely to be adverse. On the issue of 'lesser or greater' punishment, the learned High Court Judge articulated in his grounds of judgment that it is difficult to conclude as to which is a greater or lesser punishment. The High Court ruled, which we agreed, that before the DB intends to impose any punishment, it ought to have given the advocate and solicitor concerned, in this case, Syed, a reasonable opportunity to be heard. ...
>
> [30] Having carefully considered the submissions of all parties, we agreed with the decisions of the High Court and the Court of Appeal. For the foregoing reasons, question (i) is answered in the affirmative in that an advocate and solicitor should be given the opportunity to be heard under s. 103D(4) of the LPA before the DB makes an order whether to impose a greater or lesser penalty or punishment than what is recommended by the DC, Question (ii) is also answered in the affirmative in that if the DB intends to impose any punishment, it must give the advocate and solicitor a reasonable opportunity to be heard irrespective if it is likely to be adverse or otherwise before imposing a greater or a lesser punishment.

[39] In view of the above Federal Court decision, my decision on this ground certainly cannot stand. The appellant ought to have been heard before the punishment of fine was meted out.

Conclusion

[40] It was for the above reasons that I had dismissed the appellant's appeal.